

CALIFORNIA COASTAL COMMISSION

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**TH 17a**

August 31, 1999

TO: COMMISSIONERS AND INTERESTED PERSONS

FROM: DEBORAH LEE, SOUTH COAST DEPUTY DIRECTOR
SHERILYN SARB, DISTRICT MANAGER, SAN DIEGO AREA OFFICE
BILL PONDER, COASTAL PROGRAM ANALYST, SAN DIEGO AREA OFFICE

SUBJECT: STAFF RECOMMENDATION ON CITY OF CARLSBAD AGUA HEDIONDA AND MELLO II LCP SEGMENT MAJOR AMENDMENT NO. 2-99D (For Public Hearing and Possible Commission Action at the Meeting of September 14-17, 1999)

SYNOPSIS**SUMMARY OF AMENDMENT REQUEST**

The City of Carlsbad proposes to amend its local coastal program for the Mello II segment of the City of Carlsbad Local Coastal Program (LCP) and the land use plan for the Agua Hedionda Lagoon segment of the LCP. The area of land affected by this LCP amendment is the 433 acre Kelly Ranch, the development of which is governed by the Kelly Ranch Master Plan (which is included with the Agua Hedionda LUP and the Mello II LCP). The amendment proposes to rescind the Kelly Ranch Master Plan and replace it with standard land use designations and zoning. The certified Kelly Ranch Master Plan is attached as Exhibit 4 and the proposed LCP land use plan is attached as Exhibit 5.

The western portion of Kelly Ranch is addressed by the certified Agua Hedionda LUP which divides this portion of Kelly Ranch into four Planning Areas, A, B, C, and D. This portion of Kelly Ranch is characterized by a large contiguous wetland area within the wetlands boundaries of eastern Agua Hedionda Lagoon as mapped by the State Department of Fish and Game. It includes the wetlands of Agua Hedionda Lagoon and the Wetland Preserve, which is 180+ acres to be dedicated to the Department of Fish and Game. The Wetland Preserve is Planning Area B in both the proposed LCP amendment and the Kelly Ranch Master Plan. The LCP amendment proposes to change the boundaries of Planning areas A, B and C to address the changes in the wetland boundaries that have occurred on the property. The proposal would delete Planning Area D to incorporate that area into the Wetland Preserve. Also, the density on Planning Area C would be decreased from RMH (8-12 du) to RLM (0-4 du).

Regarding text changes, Land Use Policy 1.2 of the certified Agua Hedionda Land Use

Plan is proposed to be deleted. The policy describes allowed uses in the lagoon wetlands and is proposed for deletion because the allowed uses are inconsistent with Policy 3.1 which is far more restrictive and will be retained.

Of the 433 total acres of the Kelly Ranch, approximately 216 acres lie within the Mello II LUP. The Mello II Kelly Ranch property is bounded by Cannon Road on the north and west and El Camino Real to the east. Agua Hedionda Lagoon is located to the west and Macario Canyon to the south. Cannon Road divides the two segments for most of the boundary (see Exhibit 1). The Mello II portion of the Kelly Ranch property contains low lying areas associated with the Wetland Preserve immediately adjacent to the eastern shore of Agua Hedionda Lagoon, and upland areas comprised of steep hillsides and canyons that give way to mesa tops where residential development is proposed. The area can be characterized as highly scenic based on its topography and the presence of several habitat types.

The existing LCP (i.e., Kelly Ranch Master Plan) divides the portion of Kelly Ranch within the Mello II segment into planning areas that are designated for open space, commercial, and residential development (these are Planning Areas E-R). The proposed LCPA modifies most of the planning area names, boundaries and designations from that identified in the Kelly Ranch Master Plan. Areas that were previously designated for residential development are proposed for residential development; however, proposed open space boundaries have changed as a result of implementation of the City of Carlsbad Habitat Management Plan (HMP). In addition, the commercial use designation would be eliminated. The letters assigned to planning areas have been changed in the amendment and the following discussion refers to planning areas as they are identified in the LCP amendment.

Regarding open space, the configuration of previously approved open space boundaries are proposed for modification to accommodate “hardline preserve” areas identified in the City of Carlsbad Draft Habitat Management Plan (HMP). The proposed upland open space system contains steep and non-steep areas containing primarily coastal sage scrub and southern maritime chaparral that are contiguous and form two corridors on the Kelly Ranch property that provide enough area and habitat for wildlife movement. The proposed open space preserve configuration has been approved by the USF&WS and the CDF&G.

Planning Areas D, G, and H are shown for multi-family residential development. The amendment proposes a redefinition of the Planning Area boundaries and a change from 4-8 dua to 8-12 dua which would be an increase in the allowable residential units for the Planning Areas from that shown in the master plan. However, the LCP amendment proposes a change to the boundaries of Planning Areas I and J and a decrease in the allowable residential units for the Planning Areas from a density of 4-8 dua to 0-4 dua.

Planning Area F has an existing designation of Travel Recreation (T-R) which allows for visitor-serving uses. The developable portion of the site is proposed to be changed to Open Space which is a reduction in the intensity of use from Travel Related Commercial

and will accommodate the future use of the site for the Agua Hedionda Lagoon Nature Visitor Center.

Planning Area K contains the Kelly Ranch homestead and is approximately 6.3 acres. The City's submittal indicates approximately 4.3 acres is designated Open Space as part of the "hardline preserve" identified in the HMP; however, the proposed LCP land use plan map and zoning map do not reflect these designations. The land use map indicates a portion of the area to be residential RM (4-8 du). The zoning map shows the entire parcel (not yet created) to be zoned RD-M-Q.

Planning Area L is shown on the proposed LCP land use plan map and zoning as a residential parcel; however, it has not yet been created through recordation of a final subdivision map. Both maps indicate the entire parcel to be designated RM (4-8 du) and zoned RD-M-Q. This area is adjacent to the area which has been designated "hardline preserve" in the HMP and contains steep hillsides and coastal sage scrub vegetation.

No changes are proposed in Planning Area E. The land use designation is RM and the zoning R-1. This area is currently under construction with a 144 unit residential subdivision approved under a separate coastal development permit by the City.

The City is proposing text changes to the Policy 3-5 in the certified Mello II LUP applicable to the Kelly Ranch/Macario Canyon area which delete reference to the Kelly Ranch Master Plan and the permit approved by the Commission for the master plan CDP #6-84-617. Finally, the City is proposing to delete Section 21.38.160 from the certified Mello II LCP Implementation Plan. This section applies to the Kelly Ranch/Macario Canyon area. The entire policy is an attachment to this report.

It appears the proposed amendment results in an overall lower density than the existing approved Kelly Ranch Master Plan. The result of the change is a reduction in allowable residential units within the entire 433 acre Kelly Ranch from a maximum of 1400 to 909 dwelling units; however, the Master Plan also stipulates that the maximum density is not guaranteed by the plan, and that each planning area will be evaluated in relation to topography and site sensitivity to justify the proposed density.

The LCP amendment is proposed to facilitate subdivision and buildout of a large residential development on the Kelly Ranch property, although the Commission is only reviewing the proposed land use and implementation changes at this time. However, the Commission must consider impacts of residential buildout as a means to analyze the effect of the proposed LCP amendment and make revisions, as necessary, to establish the standard of review consistent with the Coastal Act.

KELLY RANCH MASTER PLAN/SITE HISTORY

The proposed Local Coastal Program Amendment (LCPA) request involves the 433-acre Kelly Ranch property located in central Carlsbad, which is bisected approximately in half by the boundary between the Agua Hedionda LCP segment, and the Mello II LCP segment. The Mello

II segment overlays the southeastern half, and in 1997 received effective certification, which transferred permit authority to the City of Carlsbad. The Agua Hedionda LCP segment overlaying the remainder of Kelly Ranch has not yet been certified, and permit authority over this segment has not yet been transferred. The boundary between the certified Mello II segment and the uncertified Agua Hedionda segment is largely the alignment of Cannon Road (Area F is within the Mello II segment).

On April 15, 1985 the Coastal Commission approved LCPAs for both Agua Hedionda and Mello II (Major Amendments 1-85), which stipulated that the Kelly Ranch property be governed by the Kelly Ranch Master Plan land use document. At the same hearing the Commission granted a coastal development permit (CDP #6-84-617) for Kelly Ranch.

The developer of CDP #6-84-617 began construction of the project in 1985, but ran into City delays and an economic recession, and eventually filed for bankruptcy and the project was never completed. Development activities conducted by the developer included the rough grading of Cannon Road and portions of the subdivision, and installation of sediment basins and drainage facilities. The property was sold in 1997 to Kelly Land Company, which began a new program of planning on the site.

Cannon Road was permitted for construction by the original CDP #6-84-617, and has recently received an updated (amended) permit (CDP No. 6-97-11). This major arterial roadway is currently under construction. In addition, Kelly Ranch Village "E" has recently received a coastal permit from the City of Carlsbad (CDP No. 96-13), on January 21, 1998 for 144 single-family homes. The Village E development is also presently under construction. In October, 1998, the City issued CDP No. 98-01 for Planning Area "F" to accommodate the Agua Hedionda Lagoon Information Center. This area was designated for visitor serving or neighborhood commercial uses in the original coastal development permit. The information center has been placed on the site and is awaiting completion.

Most recently, the City of Carlsbad approved the Kelly Ranch Core Area coastal permit (CDP 97-43). The Core Area is a 150 acre upland property within Kelly Ranch, situated entirely within the Mello II segment of the Carlsbad LCP. Although Carlsbad's coastal permit was issued conditional upon Coastal Commission approval of an LCP Amendment, it was appealed by two Coastal Commissioners. The grounds for appeal are the approved development is inconsistent with the existing applicable LCP documents and Carlsbad did not follow proper procedures in conditionally approving the permit before Commission action approving the necessary LCP amendment.

CDP #6-84-617 approved the master subdivision of the 433-acre site to create 20 parcels, rough grading of 120 acres (1.2 million cubic yards), construction of access roads and implementation of wetland restoration programs. The site contains a wide variety of topography and habitat including wetlands, pastureland, field crops, farmland, and steep slopes. The parcels ranged in size from approximately 200 acres to 2 acres. In addition to the subdivision, a 5,400 foot-long portion of Cannon Road, a major arterial, was approved, and three access roads in the southeast portion of the site. The Commission

acknowledged the wetlands of Agua Hedionda Lagoon by requiring the dedication of approximately 180 acres as a preserve. The master plan created Planning Areas to be developed under policies 1.2, 3.1 and 3.2 of the Agua Hedionda Land Use Plan and the resource protection policies of the Mello II LCP, including policies 3-5 and Section 21.203 of the Carlsbad LCP (Coastal Resource Protection Overlay Zone) as the standard of review for buildout of development (ref. Exhibits of policy language attached to the staff report). The master plan also provided approximately 77 acres of open space within naturally vegetated steep slope areas (i.e., “dual criteria” areas) which are recognized as environmentally sensitive habitat in the Mello II LCP. While the master plan provided for buildout of a maximum of 1,400 residential units, this figure was an upper limit of permitted density subject to constraints analysis and the application of resource protection policies. In its approval, the Commission waived the agricultural preservation policies in the Mello II LCP due to significant wetland preservation.

Regarding residential densities, although the master plan permitted up to a maximum of 1,400 residential units and the proposed amendment only proposes 909 units based on net developable acres as defined by the City of Carlsbad Zoning Ordinance and the underlying General Plan Land Use designations, it must be noted that the larger number was based totally on gross acreage and not net developable acres, meaning that the number of units would significantly decrease after applying the resource protection provisions of the LUP to the individual planning areas. Previously, the policy identified that densities should be determined based on the Kelly Ranch Master Plan, which is the LCP standard of review approved by the Commission.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending denial of the proposed amendment as submitted and approval if modified as suggested in this report. The proposed changes to rescind the Kelly Ranch Master Plan could result in adverse impacts to coastal resources as submitted. The attached suggested modifications would bring the amendment into conformance with Coastal Act and LCP policies.

The LCP amendment as submitted by the City was driven, in part, by the City’s effort in completing its Habitat Management Plan, and, in part, by the property owners desire to obtain a coastal development permit for residential build-out of the Mello II Core Area. However, the LCP submittal only recognizes the role of the HMP for those areas where a “hardline preserve” has been negotiated. Yet, the entire Kelly Ranch property is affected by the City’s LCP amendment and the Master Plan is being replaced by standard land use designations and zoning which do not fully recognize the role of the HMP in future build-out of the Kelly Ranch. The City’s LCP amendment fails to establish the appropriate policies within the LCP as the standard of review for entire Kelly Ranch property or recognize the role of the HMP in habitat protection for the area consistent with the Coastal Act.

Because the overriding goal of the HMP is habitat protection, the relationship between its requirements and those of the Coastal Act should be acknowledged and reconciled with

this LCP amendment. This is especially true because the resource protection policies of the Coastal Act address not only protection of environmentally sensitive habitat areas, but also landform alteration, scenic preservation and public access, all issues raised by build-out of the 433 acre Kelly Ranch. The Commission must approve the LCPA with suggested modifications designed to establish the appropriate standard of review for future buildout of the Kelly Ranch property, not simply accommodate the proposed Core Area development plan which the City approved as a companion permit and has been appealed by the Commission.

The appropriate resolutions and motions begin on page 7. The Suggested Modifications begin on page 10. The findings for denial of the Land Use Plan amendments begin on page 17. The findings for denial of the Implementation Plan amendment begin on page 39.

It is not certain which suggested modifications, if any, are acceptable to the City of Carlsbad. The City's action approving the LCP amendment was done in connection with approval of CDP 97-43 for residential development within the Mello II segment. The City had hoped the residential project could proceed prior to the on-coming rainy season, so that Cannon Road could also be completed. The project proponent has indicated the grading for the Core Area and completion of Cannon Road are inextricably integrated and that a delay to the issuance of the Core Area permit means an unacceptable delay to completion of Cannon Road. For these reasons, it is anticipated the suggested modifications are not acceptable to the City.

LCP BACKGROUND

The City's certified LCP contains six geographic segments as follows: Agua Hedionda, Mello I, Mello II, West Batiquitos Lagoon/Sammis Properties and East Batiquitos Lagoon/Hunt Properties and Village Redevelopment Area. Pursuant to Sections 30170(f) and 30171 of the Public Resources Code, the Coastal Commission prepared and approved two portions of the LCP, the Mello I and II segments in 1980 and 1981, respectively. The Village Redevelopment Area LCP was certified in 1988; the City has been issuing coastal development permits there since that time. The Commission certified the Agua Hedionda Land Use Plan in 1982. The West Batiquitos Lagoon/ Sammis Properties segment was certified in 1985. The East Batiquitos Lagoon/Hunt Properties segment was certified in 1988. On October 21, 1997, the City assumed permit jurisdiction and has been issuing coastal development permits for all of its segments except Agua Hedionda. The Agua Hedionda Lagoon LCP segment remains as a deferred certification area until an implementation plan is certified. The subject amendment request affects both the Agua Hedionda and Mello II segments of the LCP.

ADDITIONAL INFORMATION

Further information on the submittal may be obtained from **Bill Ponder** at the San Diego Area Office of the Coastal Commission at 3111 Camino Del Rio North, Suite 200, San Diego, CA 92108, (619) 521-8036.

PART I. OVERVIEW**A. STANDARD OF REVIEW**

The standard of review for land use plans, or their amendments, is found in Section 30512 of the Coastal Act. This section requires the Commission to certify an LUP or LUP amendment if it finds that it meets the requirements of Chapter 3 of the Coastal Act. Specifically, it states:

Section 30512

(c) The Commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200). Except as provided in paragraph (1) of subdivision (a), a decision to certify shall require a majority vote of the appointed membership of the Commission.

The standard of review for implementation plans, or their amendments, is found in Section 30513 of the Coastal Act. Pursuant to Section 30513, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

B. PUBLIC PARTICIPATION

The City has held both Planning Commission and City Council hearings with regard to the subject amendment request. Each of these local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS

Following a public hearing, staff recommends the Commission adopt the following resolution and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to the resolution.

- A. RESOLUTION I (Resolution to approve certification of the City of Carlsbad Agua Hedionda Land Use Plan and Mello II LCP Land Use Plan Amendment #2-99D, as submitted)**

MOTION I

I move that the Commission certify the Agua Hedionda and Mello II Land Use Plan Amendment #2-99D, as submitted.

Staff Recommendation

Staff recommends a **No** vote and adoption of the following resolution and findings. An affirmative vote by a majority of the appointed Commissioners is needed to pass the motion.

Resolution I

The Commission hereby denies the amendment request to the Agua Hedionda and Mello II Land Use Plans, as submitted, and adopts the findings stated below on the grounds that the amendment will not meet the requirements of and conform with the policies of Chapter 3 (commencing with Section 30200) of the California Coastal Act to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act; the land use plan, as amended, will be inconsistent with applicable decisions of the Commission that shall guide local government actions pursuant to Section 30625(c); and certification of the land use plan amendment will not meet the requirements of Section 21080.5(d)(2)(i) of the California Environmental Quality Act; as there would be feasible measures or feasible alternatives which would substantially lessen significant adverse impacts on the environment.

B. RESOLUTION II (Resolution to approve certification of the City of Carlsbad Agua Hedionda and MelloII Land Use Plan Amendment 2-99D, if Modified)

MOTION II

I move that the Commission certify the Agua Hedionda and Mello II Land Use Plan Amendment #2-99D, if modified.

Staff Recommendation

Staff recommends a **YES** vote and adoption of the following resolution and findings. An affirmative vote by a majority of the appointed Commissioners is needed to pass the motion.

Resolution II

The Commission hereby approves the amendment request to the Agua Hedionda and Mello II Land Use Plan, as modified, and adopts the findings stated below on the grounds that the amendment will meet the requirements of and conform with the policies of Chapter 3 (commencing with Section 30200) of the California Coastal Act to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act; the land use plan, as amended, will be consistent with applicable decisions of the Commission that shall guide local

government actions pursuant to Section 30625(c); and certification of the land use plan amendment will meet the requirements of Section 21080.5(d)(2)(i) of the California Environmental Quality Act; as there would be no feasible measures or feasible alternatives which would substantially lessen significant adverse impacts on the environment.

C. RESOLUTION III (Resolution to reject certification of Mello II Implementation Plan Amendment #2-99D, as submitted)

MOTION III

I move that the Commission reject the City of Carlsbad Mello II Implementation Plan Amendment #2-99D as submitted.

Staff Recommendation

Staff recommends a **YES** vote and the adoption of the following resolution and findings. An affirmative vote by a majority of the Commissioners present is needed to pass the motion.

Resolution III

The Commission hereby denies certification of the Mello II Implementation Plan Amendment, to the City of Carlsbad's Local Coastal Program on the grounds that the amendment does not conform with, and is inadequate to carry out, the provisions of the certified land use plan. There are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts, which the approval would have on the environment.

D. RESOLUTION IV. (Resolution to approve certification of the City of Carlsbad Mello II Implementation Plan Amendment #2-99D, if modified)

MOTION IV

I move that the Commission approve the City of Carlsbad Mello II Implementation Plan Amendment 2-99D if it is modified in conformance with the suggestions set forth in this staff report.

Staff Recommendation

Staff recommends a **YES** vote and the adoption of the following resolution and findings. An affirmative vote by a majority of the Commissioners present is needed to pass the motion.

Resolution IV

The Commission hereby approves certification of the implementation amendment, as approved with suggested modifications, to the City of Carlsbad's Local Coastal Program on

the grounds that the amendment does conform with, and is adequate to carry out, the provisions of the certified land use plan. There are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts which the approval would have on the environment.

PART III. SUGGESTED MODIFICATIONS

A. Aqua Hedionda Land Use Plan Revisions

1. Revised Land Use Plan Map - The City shall prepare a revised LCP Land Use Plan map, to replace existing Exhibit C contained in the certified Aqua Hedionda LCP Land Use Plan, which shall incorporate the following changes:

- a. Revisions to the boundaries of Planning Areas A, B, and C as proposed in LCPA #2-99D Kelly Ranch;
 - b. The land use designation on Planning Area A shall be revised from the proposed RMH (8-15 dua) to RLM (0-4 dua);
 - c. The land use designation on Planning Area B shall be Open Space and the map shall delineate the boundary as that shown on attached Exhibit 11 corresponding to the area to be dedicated as Wetland Preserve to the Department of Fish and Game.
 - d. The land use designation on Planning Area C shall be revised from RMH to RLM as proposed by the City;
2. Revised Exhibit D – Wetlands – The City shall prepare a revised Exhibit D which shall indicate the boundary of the Wetland Preserve described in (c) above and any wetlands located on proposed Parcels A and C.

3. Permitted Uses in Wetlands/Buffers – Section 30233 shall be added to the text of the certified Aqua Hedionda Land Use Plan after Section 30240 on page 22. Additionally, Policy 3.1 shall be revised to read as follows:

3.1 Kelly Property. No ~~uses~~ development shall occur within the boundaries of the ~~Wetland Preserve area, (see foldout exhibit at back of document)~~ except to the extent those activities necessary for resource maintenance and resource management, ~~farming and grazing~~, or except as approved by the State Department of Fish and Game if also consistent with Section 30233 of the Coastal Act. No development shall occur within wetlands that are outside of the Wetlands Preserve except to the extent such development is consistent with Section 30233 of the Coastal Act.

- a) A buffer strip of at least 100 feet in width shall be maintained in a natural condition around the perimeter of all wetlands or environmentally sensitive habitat areas, unless the State Department of Fish and Game determines that a lesser setback or physical barrier is adequate. However, in no case shall a buffer of less than 50 feet in width be permitted.

b) Fencing shall be required to prevent uncontrolled access of persons or domestic animals into the wetland or environmentally sensitive areas; and

c) No vehicle, pedestrian, or equestrian access shall be permitted within either the wetland, environmentally sensitive, or buffer areas, except for resource management and educational purposes. Access improvements shall be permitted only within the upper half of the required buffer.

4. Landform Alteration – Policy 4.4 shall be revised to read as follows:

4.4 Recognizing the unique environmental features of the lagoon and its environs and the sensitivity of the area to soil erodibility and sedimentation, development shall be regulated as follows:

a. Development on existing subdivided lots having all of their area in slopes of 25% or greater shall be permitted, but grading shall be limited to minimal site preparation for pole type footings. Driveway, parking areas shall be limited in size and shall be restricted to an area adjacent to the local streets. On site vegetation shall not be disturbed beyond the minimal area needed to be cleared for the construction process, which shall be clearly delineated on approved site plans.

b. Development, grading and landform alteration ~~in~~ of natural steep slope areas (25%) shall be ~~restricted~~ avoided, when feasible. Any unavoidable disturbance shall be minimized to the extent possible. Exceptions may include encroachments by roadway and utilities necessary to reach flatter developable areas, when there is no feasible less environmentally damaging alternative. The maximum allowable density shall be calculated on the total lot area, although this may be modified through setbacks, plan review, or other requirements of this plan and applicable city regulations.

c. Use of the Planned Development (PD) Ordinance and cluster development shall be required in areas containing environmentally sensitive resources, extensive steep slope areas and significant natural landform features.

5. Public Works/Gated Communities – Policy 5.9 (c) shall be revised to read as follows:

c) Dedication of easements and provisions for funding all public improvements required by this plan and other city plans and ordinances, shall be a requirement for new development. Improvements shall include utility extensions, roadways, bicycle and pedestrian access to designated viewpoints, and any other public improvements necessary to accommodate the proposed development. Public streets with on-street parking, as feasible, shall be required and no private gates shall be permitted for any residential development located between Park Drive or Cannon Road and Aqua Hedionda Lagoon.

6. Water Quality - Add Section 5.10 to read:

Water Quality/Best Management Practices (BMPs). Best Management Practices (BMPs) that are appropriate for residential development, including but not limited to, curb inlet stenciling, solid waste management (trash removal) and street sweeping, shall be incorporated into the design through a water quality/urban runoff control plan and monitoring program to ensure the discharge from all proposed outlets is consistent with local and regional standards. Such measures shall be required as a condition of development approval at the subdivision stage.

7. Public Views – Add the following to Policy 8.3 which addresses regulation of development located between the road and the shoreline:

e) Any residential subdivision on Kelly Parcel A shall be designed to preserve any natural landform and shall provide a public view corridor of a width equivalent to at least one-third of the road frontage of the parcel, at the northern property line. The public view corridor shall be kept free of all structures and free of landscaping which at maturity would rise above a reasonable viewline from vehicles passing on the public road. The view corridor shall be secured through deed restriction or easement as a condition of development approval.

B. Mello II Land Use Plan Revisions

8. Revised Land Use Plan Map - The City shall prepare a revised LCP Land Use Plan map, to replace the approved Kelly Ranch Master Plan for the Mello II LCP segment which shall incorporate the following changes:

a. The map shall include a revised Open Space boundary that shall include the cross-hatched area delineating “hardline preserve” on Figure 12 dated 3/4/99 of the draft Habitat Management Plan attached as Exhibit 10.

b. The boundary line for Parcel L shall be eliminated on the land use map.

c. The Open Space area that forms the north/south open space corridor shall be revised to include the “breaks” in the corridor that correspond to access roads negotiated with the Resource agencies as part of the Biological Assessment and 4D permit, so there is one contiguous north/south open space corridor.

d. Parcel F shall be shown as Open Space.

9. Revised Zoning Map – The City shall prepare a revised zoning map as a component of the LCP Implementation Plan which shall incorporate the following changes:

a. The map shall include Open Space zoning over the area designated as Open Space in the revised LCP Land Use Plan map required above.

b. The parcel lines and residential zoning for Parcel L shall be eliminated.

c. The residential zoning of RD-M-Q shall only apply to the area of proposed Parcel K which is outside the “hardline preserve” area shown on the Figure 12 dated 8/24/99 in the HMP and attached to this report.

d. Parcel F shall be zoned Open Space.

10. City Revisions to Policy 3-5 Kelly Point/Macario Canyon Area – The following sections of Policy 3-5 (a) of the certified Mello II LUP shall be revised to read as follows (**bold** indicates Coastal Commission changes to City proposed changes):

(a)(6) ~~For the Kelly Ranch Master Plan area, Residential densities in the 433 acre Kelly Ranch and slope criteria shall be permitted and based on those contained in the City approved Master Plan and as approved by the Coastal Commission in Permit 6-84-617 the underlying General Plan LCP Land Use designation. The residential land use designations represent the~~ **maximum density permitted subject to application of the steep hillside and other applicable resource protection provisions of the certified LCP;**

(a)(7) Approximately ~~4~~ 2.8 acres located adjacent to the extension of **and west of** Cannon Road, ~~and as described in coastal development permit 6-84-617~~ **CDP 98-47** are designated **Open Space with for visitor serving or neighborhood commercial use an interpretive center for Aqua Hedionda designated as a allowable use.**

11. Reference to Master Plan and CDP – The following additional changes shall be made to Policy 3-5 (b) to strike reference to the Kelly Ranch Master Plan and CDP 6-84-617 as an LCP standard:

(b) ~~Coastal Commission Permit 6-84-617 Agriculture~~

~~Due to overriding and extensive wetland preservation and protection provisions of the Kelly Ranch Master Plan as approved by the City and Coastal Commission in permit 6-84-617, agricultural preservation policies are waived.~~

Agricultural preservation policies for the 433 acre Kelly Ranch remaining areas covered by this policy have been deleted by LCP amendment of 2-85.

12. Environmentally Sensitive Habitat Areas – Rename Policy 3-5 (c) to Environmentally Sensitive Habitat Areas and add subsections (1) d, e and f, as follows:

d) The City’s Habitat Management Plan (HMP) is designed to sustain and enhance a viable upland habitat connection between sensitive lands within Carlsbad. In the Kelly Ranch/Macario Canyon area, such a connection is between the Macario Canyon watershed and Agua Hedionda Creek. Lands designated as “hardline preserve” in the HMP within the coastal zone shall be designated and zoned as Open Space in the LCP. Projects that are located in the “standards areas” shall require consultation with the Resource agencies and Coastal Commission staff to determine whether the proposed project is consistent with the certified LCP and the standards discussed in the HMP prior

to proceeding through the City permit review process.

e) Access roads shall be a permitted use within designated and zoned Open Space subject to an approved 4D permit and coastal development permit, when necessary to access flatter areas and when designed to be the least environmentally damaging feasible alternative.

f) Open space also designated as “hardline preserve” in the HMP shall be considered environmentally sensitive habitat area pursuant to Section 30240 of the Coastal Act.

13. Water Quality – Add the following as new subsection Policy 3-5 (c) (6):

Water Quality/Best Management Practices (BMPs). Best Management Practices (BMPs) that are appropriate for residential development, including but not limited to, curb inlet stenciling, solid waste management (trash removal) and street sweeping, shall be incorporated into the design through a water quality/urban runoff control plan and monitoring program to ensure the discharge from all proposed outlets is consistent with local and regional standards. Such measures shall be required as a condition of development approval at the subdivision stage.

14. Brush Management – Add the following as new subsection Policy 3-5 (e):

All development shall be setback a minimum of 30-feet from designated open space areas to accommodate Zone 1 brush management and landscaping, including trees for screening purposes. All development shall be designed to assure there will be no clearcut of environmentally sensitive habitat areas to establish brush management Zone 1.

15. Scenic Preservation – Add the following as new subsection Policy 3-5 (f):

Landscape screening of development located along ridgelines shall be a requirement to preserve scenic views from Scenic Highways and public open space and resource areas. Use of trees which reach substantial height at maturity shall be a requirement as a condition of development approval.

16. Vista Points – Provide for the following as new subsection Policy 3-5 (g) and develop a Scenic Resource map indicating the designated vista points:

The City shall require public vista points on the upper, flatter portion of proposed Parcel L and at another location on the ridgeline within Planning Areas I or J and accessible from the community trails system. Support parking shall be provided. Dedication of easements shall be a condition of subdivision approval.

17. Public Trails – Provide for the following as part of the Mello II land use plan and develop a Public Trails map delineating the approved trail system:

The City shall require a public trails system that links a series of community trails between Aqua Hedionda Lagoon, the interpretive center, the street system, open space areas (as permitted by

USFWS and DFG) and the approved public vista points. Trails easements shall be dedicated as a condition of subdivision approval. Trail improvements shall be installed concurrent with residential development.

18. Public Streets/Gated Communities - Add the following as new subsection Policy 3-5 (h):

Residential development located in the 422 acre Kelly Ranch shall include a public street system with on-street parking, as feasible, to support the public trail system and vista points. Private gated communities shall not be permitted.

C. Mello II Implementation Plan Revisions

19. Coastal Resource Protection - Section 21.203 (Coastal Resource Protection Overlay Zone) shall apply to the Kelly Ranch property and shall be amended to provide the following as new provisions.

20. Preservation of Steep Slopes and Vegetation – Add the following as new subsections 21.203.040 A. 1.d-g:

d. Those portions of the Habitat Management Plan (HMP) “hardline preserve” that exist on lands within the coastal zone shall be designated and zoned as Open Space in the LCP. Projects that are located in the “standards areas” shall require consultation with the Resource agencies and Coastal Commission staff to determine whether the proposed project is consistent with the certified LCP and the standards discussed in the HMP prior to proceeding through the City permit review process.

e. Access roads shall be a permitted use within designated and zoned Open Space areas subject to an approved 4D permit and coastal development permit, only when necessary to access flatter areas and when designed to be the least environmentally damaging feasible alternative.

f. All development shall be setback a minimum of 30-feet from designated open space areas to accommodate Zone 1 brush management and landscaping, including trees for screening purposes. All development shall be designed to assure there will be no clearcut of environmentally sensitive habitat areas to establish brush management Zone 1.

g. Due to severe site constraints, innovative siting and design criteria (including shared use of driveways, clustering, tandem parking, pole construction) shall be incorporated into approved residential development to minimize paved surface area. Dwelling units shall be clustered in the relatively flat portions of the site.

21. Grading Season – Revise Section 21.203.040 (B) 4) e) as follows:

All construction activities shall be planned so that grading will occur in units that can be easily completed with the summer construction season. All grading operations shall be limited from April 1 to October 1 of each year. All areas disturbed by grading shall be

planted within 60 days of initial disturbance and prior to October 1 with temporary or permanent (in the case of finished slopes) erosion control methods. The October 1 grading season deadline may be extended by an approved amendment to the coastal development permit and subject to an interim erosion control plan addressing temporary and emergency erosion control measures designed to prohibit discharge of sediment off-site during and after the grading operation is completed.

22. Water Quality – Add the following as new Sections 21.203.040 (B) 4) j):

Water Quality/Best Management Practices (BMPs). Best Management Practices (BMPs) that are appropriate for residential development, including but not limited to, curb inlet stenciling, solid waste management (trash removal) and street sweeping, shall be incorporated into the design through a water quality/urban runoff control plan and monitoring program to ensure the discharge from all proposed outlets is consistent with local and regional standards. Such measures shall be required as a condition of development approval. Monitoring similar to that required through the City's NPDES permit shall be required for all storm drain outlets approved on the 433 acre Kelly Ranch property at the subdivision stage.

23 Park Purposes – Add the following as new Section 21.203.040 (F):

Park purposes shall be a permitted use compatible with within Macario Canyon provided that any park construction is subject to the erosion and urban runoff control provisions of Section 21.203.

24. Scenic Preservation Overlay Zone – Revise LCP implementation plan as necessary to assure the Scenic Preservation Overlay Zone applies to the Kelly Ranch property.

25. Scenic Preservation - Revise Section 21.40.135 Coastal Zone Restrictions to read as follows:

Within the coastal zone, existing public views and panorama shall be maintained. Through the individualized review process, sites considered for development shall be conditioned so as to not obstruct or otherwise damage the visual beauty of the coastal zone. In addition to the above, height limitations and see-through construction techniques should be employed. Shoreline development shall be built in clusters to leave open areas around them to permit more frequent views of the shoreline. Vista points shall be incorporated as a part of larger projects. The unique characteristics of older communities such as the Carlsbad Village Drive corridor shall be preserved through design requirements which are in accordance with the flavor of the existing neighborhood. Development along ridgelines and/or visible from major coastal access routes and/or designated Scenic Highways or public recreational or resource areas shall be screened from public views through the use of trees as a landscape screen and/or setbacks from the ridgeline and open space areas.

PART IV. FINDINGS FOR DENIAL OF THE CITY OF CARLSBAD
AGUA HEDIONDA AND MELLO II LAND USE PLAN AMENDMENT 2-99D,
AS SUBMITTED

A. AMENDMENT DESCRIPTION

1. Aqua Hedionda Land Use Plan

The City of Carlsbad proposes to amend its local coastal program for the Mello II segment of the City of Carlsbad Local Coastal Program (LCP) and the land use plan for the Agua Hedionda Lagoon segment of the LCP. The area of land affected by this LCP amendment is the 433 acre Kelly Ranch, the development of which is governed by the Kelly Ranch Master Plan (which is included with the Agua Hedionda LUP and the Mello II LCP). The amendment proposes to rescind the Kelly Ranch Master Plan and replace it with standard land use designations and zoning. The western portion of Kelly Ranch is within the Agua Hedionda plan area. The LUP divides the portion of Kelly Ranch in the plan area into four Planning Areas, A, B, C, and D. This portion of Kelly Ranch is characterized by a large contiguous wetland area within the wetlands boundaries of eastern Agua Hedionda Lagoon as mapped by the State Department of Fish and Game. It includes the wetlands of Agua Hedionda Lagoon and the Wetland Preserve, which is 180+ acres to be dedicated to the Department of Fish and Game and shown as Planning Area B in the proposed local coastal program amendment and the Kelly Ranch Master Plan. Existing Park Drive runs generally east to west adjacent to upland and marsh areas of the lagoon just north of the four planning areas of the master plan (Planning Areas A, B, C and D) within the Agua Hedionda Lagoon segment. Along the western boundary of the site, in Planning Area A is several previously filled wetland areas. These areas, known as the “fingers” extend outward from Planning Area A. The LCP amendment proposes to change planning area boundaries, delete Planning Area D and include its land area within Planning Area B, and revise density on Planning Area C as follows:

Planning Area A & B

The existing designation for Planning Area A is RMH and Planning Area B is Open Space. Both will remain the same. The amendment proposes a boundary adjustment between development Planning Area A and the Agua Hedionda Lagoon, Planning Area B, which separates the developable portion of the Planning Area A from the lagoon and ultimately reduces the size of Planning Area A. The net effect is a reduction in the allowable residential units.

Planning Area C

The existing designation for Planning Area C is RMH and will be changed to RLM. In addition, the amendment proposes an adjustment between Planning Area C and Planning Area B which will reduce the size of Planning Area C. The adjustment is intended to include constrained lands into Planning Area B which is Open Space. The City indicates an RLM designation on this property is appropriate since it is surrounded by single

family residential and there is only one point of access. Residential Medium High has a density range of 8-15 dwelling units per acre (du/ac) and Residential Low-Medium has a density range of 0-4 du/ac. The net effect is a reduction in the allowable residential units which is compatible with the neighborhood and also equates to fewer Average Daily Traffic (ADT) to the street which accesses the site.

Land Use Policy 1.2 of the certified Agua Hedionda Land Use Plan is proposed to be deleted. The policy describes allowed uses in the lagoon wetlands and is proposed for deletion because the allowed uses are inconsistent with Policy 3.1 which is far more restrictive. The policies are as follows:

Policy 1.2

That portion of the “Kelly Property” containing wetland areas shall be designated as open space consistent with the maintenance of the natural resources of the wetlands and floodplain area. Permitted uses shall include maintenance and extension of utility transmission and distribution systems, agriculture, outdoor plant nurseries, fish hatcheries, driving ranges, archery ranges, hiking and equestrian trails, apiaries, or other non-intensive recreational, scientific or educational uses compatible with resource values. No permanent structures or impermeable surfacing or filling shall be permitted within the 100-year floodplain. Any development of the property shall be subject to regulation by conditional use permit and shall be subject to the approval of the State Department of Fish and Game.

Policy 3.1—Kelly Property

No uses shall occur within the boundaries of the wetland area except those activities necessary for maintenance, resource management, farming and grazing, or as approved by the State Department of Fish and Game

- a) A buffer zone of at least 100-feet in width shall be maintained in a natural condition around the perimeter of all wetlands or environmentally sensitive habitat areas, unless the State Department of Fish and Game determines that a lesser setback or physical barrier is adequate.
- b) Fencing shall be required to prevent uncontrolled access of persons or domestic animals into the wetland or environmentally sensitive areas; and
- c) No vehicle, pedestrian, or equestrian access shall be permitted within either the wetland, environmentally sensitive, or buffer areas, except for resource management and educational purposes.

Policy 3.1 states that no uses shall occur within the boundaries of the wetland area except those activities necessary for maintenance, resource management, farming and grazing, or as approved by the State Department of Fish and Game. By comparison, Land Use

Policy 1.2 allows for outdoor plant nurseries, fish hatcheries, driving ranges, archery ranges, and agricultural production. The City found the proposed permitted uses within wetlands are more in line with those accepted in the Mello II LCP and Chapter 3 policies of the Coastal Act.

2. Mello II Land Use Plan

Although the Kelly Ranch Master Plan serves as both the Land Use Plan and Implementation Plan, it is part of the certified Land Use Plan of the Mello II LCP. Thus, amendments to the Master Plan are amendments to the LUP and are reviewed for consistency with Chapter 3 policies of the Coastal Act.

The Mello II LCP land use map is proposed for modification to eliminate the existing Kelly Ranch Master Plan land use regulatory document, and replace it with the General Plan Map and zoning standards applicable to a new land use scheme (see exhibits 4 and 5). In addition, LCP text changes are proposed to eliminate references to the Kelly Ranch Master Plan, and to instead refer to the new proposed zoning requirements, as follows:

Existing Land Uses - Kelly Ranch Master Plan	Proposed Land Uses -	Proposed Zoning - Coastal Zoning Map
	Residential Low-Medium (RLM)	R-1-Q
Residential Medium (RM)	Residential Medium (RM)	R-1-Q and R-3-Q
Travel-Recreation Commercial (T-R)		
Open Space (OS)	Open Space (OS)	OS

Of the 433 total acres of the Kelly Ranch, approximately 216 acres lie within the Mello II LUP area with the remaining in the Agua Hedionda Lagoon segment. The Mello II property is bounded by Cannon Road and El Camino Real to the north and east, Agua Hedionda Lagoon to the west and Macario Canyon to the south. Cannon Road divides the two segments for most of the boundary (see exhibit 1). The road joins El Camino Real south of the Agua Hedionda Creek bridge. Portions of the roadway lie within the 100-year floodplain of Agua Hedionda Creek.

The existing LCP (i.e., Kelly Ranch Master Plan) divides the portion of Kelly Ranch within the Mello II segment into planning areas that are designated for open space, commercial, and residential development (these are Planning Areas E-R). The proposed LCPA modifies most of the planning area names, boundaries and designations from that identified in the Kelly Ranch Master Plan. Areas that were previously designated for residential development are proposed for residential development; however, proposed open space boundaries have changed as a result of implementation of the Habitat Management Plan (HMP). In addition, the commercial use designation would be

eliminated. The letters assigned to planning areas have been changed in the amendment and the following discussion refers to planning areas as they are identified in the LCP amendment.

Planning Areas D, G, and H

The existing designation for these Planning Areas is RM. The amendment proposes a re-definition of the Planning Area boundaries and a change to RMH. The net effect of the change would be an increase in the allowable residential units for the Planning Areas. Residential Medium High has a density range of 8-15 du/ac as compared to a density range of 4-8 du/ac for Residential Medium.

The City indicates the increase in density is appropriate in that, the site is near major sources of employment at the Carlsbad Research Center, Carlsbad Airport Center, Carlsbad Ranch and Legoland California. The site is situated on a Circulation Element Roadway with direct access to Interstate 5. The site has hillside conditions with a great difference in site elevations. The Planning Areas are located at the base of the hillside adjacent to the major roadways which accommodates access and reduces grading requirements. The site is also geographically separated from established residential neighborhoods by the lagoon and hillsides. The increase in density for these Planning Areas is also balanced against the reduction in densities of Planning Areas I and J located at the upper reaches of the site.

Planning Areas I and J

The existing designation for these Planning Areas is RM. The amendment proposes a re-definition of the Planning Area boundaries and a change to RLM. The net effect of the change would be a decrease in the allowable residential units for the Planning Areas. Residential Low Medium has a density range of 0-4 du/ac as compared to a density range of 4-8 du/ac for Residential Medium. The City concluded that the reduction in density is appropriate in that these Planning Areas are more difficult to access because of the hillside conditions.

Planning Area F

The existing designation for this Planning Area is Travel Recreation (T-R) which allows for visitor-serving uses. The developable portion of the site is proposed to be changed to Open Space which is a reduction in the intensity of use from Travel Related Commercial and will accommodate the future use of the site for the Agua Hedionda Lagoon Nature Visitor Center. The City found this proposed change to be appropriate in that the reduced use intensity will reduce ADT, the potential future use will provide community facilities which will benefit the new residential development and the community at large, and will potentially have lesser offsite impacts to the adjacent Agua Hedionda Lagoon wetlands in the form of less night lighting and less potential of unsupervised entrance and disturbance to the wetlands.

Planning Area K

This planning area contains the Kelly Ranch homestead and is approximately 6.3 acres. The City's submittal indicates approximately 4.3 acres is designated Open Space as part of the "hardline preserve"; however, the proposed LCP land use plan map and zoning map do not reflect these designations. The land use map indicates a portion of the area to be residential RM (4-8 dua). The zoning map shows the entire parcel (not yet created) to be zoned RD-M-Q.

Planning Area L

The proposed LCP land use plan map and zoning show this area as a parcel; however, it has not yet been created through recordation of a final subdivision map. Both maps indicate the entire parcel to be designated RM (4-8 dua) and zoned RD-M-Q.

Planning Area E

No changes are proposed in Planning Area E. The land use designation is RM and the zoning R-1. This area is currently under construction with a 144 unit residential subdivision approved under a separate coastal development permit by the City.

Open Space

The configuration of previously approved open space boundaries are proposed for modification to accommodate "hard line" preserve areas identified in the City of Carlsbad Draft Habitat Management Plan (HMP). Briefly, the upland open space system that was approved in the Kelly Ranch Master Plan conformed to the "dual criteria" slopes that exist on the site. These dual criteria areas are naturally vegetated slopes (i.e., containing coastal sage scrub or chaparral) that are at least 25% grade. The Carlsbad LCP protects such slopes from development encroachment as dual criteria slopes provide habitat value, stabilize the soils, and have value as a scenic resource.

Since the certification of the Master Plan, the federal government has listed the gnatcatcher as a "threatened" species under the federal Endangered Species Act and the gnatcatcher's habitat, coastal sage scrub, has in many instances been designated by the Commission as environmentally sensitive habitat area subject to section 30240 of the Coastal Act. In addition, the State has enacted the Natural Community Conservation Planning Act. The City of Carlsbad, the CDF&G and the USF&WS have worked together to implement the NCCP planning process by establishing habitat corridors used by multiple species including the gnatcatcher that will be preserved. The process has resulted in a draft habitat management plan (HMP) that identifies habitat corridors in the Kelly Ranch area. These corridors are identified in the HMP as "hardline preserve" areas and, under the HMP, these areas cannot be developed.

The LCP amendment revises the plans for development of Kelly Ranch to reflect the results of the HMP process. This includes revising the boundaries of the designated open space to include all areas identified as "hardline preserve" in the HMP. The proposed

upland open space system contains steep and non-steep areas containing primarily coastal sage scrub and southern maritime chaparral that are more contiguous than the dual criteria areas and which form two corridors on the Kelly Ranch property that provide enough area and habitat for wildlife movement. The proposed open space preserve configuration has been approved by the USF&WS and the CDF&G.

Text Changes

The City is proposing text changes to the policy in the certified Mello II LUP applicable to the Kelly Ranch/Macario Canyon area as follows. The entirety of Policy 3-5 is an attachment to this report. Policy 3-5(a)(6) is proposed to be revised as follows:

~~For the Kelly Ranch Master Plan area, Residential densities in the 433-acre Kelly Ranch and slope criteria shall be permitted based on those contained in the City approved Master Plan and as approved by the Coastal Commission in Permit 6-84-~~
84- the underlying General Plan Land Use designation.

Policy 3-5(a)(7) is proposed to be revised as follows:

~~Approximately four 2.8 acres located adjacent to the extension of Cannon Road, and as described in coastal development permit 6-84-617 CDP 98-47 are designated for visitor serving or neighborhood commercial use~~
an interpretive center for Agua Hedionda.

Finally, the City is proposing to delete Section 21.38.160 from the certified Mello II LCP Implementation Plan. This section applies to the Kelly Ranch/Macario Canyon area. The entire policy is an attachment to this report.

The LCP amendment is proposed to facilitate subdivision and buildout of a large residential development on the Kelly Ranch property, although the Commission is only reviewing the proposed land use and implementation changes at this time. The Commission must consider impacts of residential buildout as a means to analyze the effect of the proposed LCP amendment and make revisions, as necessary, to establish the standard of review consistent with the Coastal Act.

B. CONFORMANCE WITH SECTION 30001.5 OF THE COASTAL ACT

The Commission finds, pursuant to Section 30512.2b of the Coastal Act, that portions of the Land Use Plan as set forth in the preceding resolutions, is in conformance with the policies and requirements of Chapter 3 of the Coastal Act to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act which states:

The legislature further finds and declares that the basic goals of the state for the Coastal Zone are to:

a) Protect, maintain and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and manmade resources.

b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.

d) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resource conservation principles and constitutionally protected rights of

e) private property owners.

(d) Assure priority for coastal-dependent and coastal-related development over other development on the coast.

(e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

The Commission therefore finds, for the specific reasons detailed below, that the land use plan does not conform with Chapter 3 of the Coastal Act or the goals of the state for the coastal zone.

C. CHAPTER 3 CONSISTENCY

1. Environmentally Sensitive Habitat Areas

a. Agua Hedionda Land Use Plan.

Section 30233 states in part:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects ...

Section 30240 states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas and shall be compatible with the continuance of those habitat and recreation areas.

Agua Hedionda Lagoon LUP Policy 1.2 is proposed to be deleted and be replaced by existing Policy 3.1.

Planning Area B contains 180+ acres of open space and is known as the Agua Hedionda Lagoon wetlands preserve system. In CDP #6-84-617 the Commission required an irrevocable offer to dedicate in fee title these low lying wetland areas which was recorded in 1985. However, the offer has not yet been accepted. It is expected that the preserve system will be dedicated to the Wildlife Conservation Board as a Wetland Preserve sometime this year. A copy of the draft offer has been given to Commission staff. The Wetland Preserve is also part of the City's Habitat Management Plan (HMP). The HMP is a segment of the state's larger NCCP program that is being developed in response to the listing of the California Gnatcatcher as an endangered species. The focus of the NCCP and HMP is to preserve coastal sage scrub and related upland habitats. The draft HMP identifies the wetland preserve as an "hard line" preserve area that cannot be developed.

While it appears that policy 3.1 is the environmentally preferred policy, when compared to Policy 1.2, with respect to wetlands protection, it still would allow farming and grazing as permitted uses within wetlands. These are not identified as permitted uses within Section 30233 of the Coastal Act. To be consistent with Section 30233, these uses must be deleted from the LUP policy. Regarding permitted uses within the Wetland Preserve, Policy 3.1 must be revised to indicate no uses shall occur within the boundaries of the wetland preserve, Planning Area B, except those activities necessary for maintenance and resource management. Additionally, the certified LUP lacks specific policy language addressing wetland areas outside the Wetland Preserve. Thus, Section 30233 must be added to the text of the certified Agua Hedionda Land Use Plan to make clear that uses permitted in all remaining wetlands shall be limited to those identified in Section 30233 of the Coastal Act.

Additionally, with regards to water quality, the LUP contains no provisions that require new development to use Best Management Practices (BMPs) during construction and operation of residential projects to ensure water quality will be preserved through a water quality/urban runoff control plan. Section 30231 of the Coastal Act requires that the biological productivity and quality of coastal waters, wetlands, and estuaries be maintained and restored through, among other means, controlling run-off. Because Kelly Ranch is adjacent to Agua Hedionda Lagoon and its surrounding wetlands, residential development in Kelly Ranch has the potential to adversely affect the water quality of the lagoon and surrounding wetlands. Since the certification of the Kelly Ranch Master Plan, additional BMPs that are helpful in reducing the amount of pollutants in run-off have been identified. Implementation of such BMPs in residential development in Kelly Ranch would reduce the adverse impacts of such development on the lagoon and surrounding wetlands. Since the LCP amendment fails to incorporate certain BMPs, it is inconsistent with Section 30231 and must be denied.

Agua Hedionda Lagoon LUP policy 3.1 also provides for a 100-foot buffer between wetland resources and new development unless reduced by the Department of Fish and Game. A 50-foot buffer zone was approved by the Commission in CDP #6-84-617 in

Planning Area A based on a large topographical difference in elevation between the developable portion of the planning area and wetland resources. Since that time the wetlands have expanded and the Commission must consider whether the proposed density is appropriate based on the environmental resources present on the site at this time. The Commission finds that the proposed LUP amendment is inconsistent with Chapter 3 policies because it fails to update the policies relating to the wetland resources and permitted density on Planning Area A to reflect current wetland and ESHA conditions. The previous wetland delineation for Planning Area A was done many years ago and the wetlands in this area have expanded. It may no longer be appropriate to accept a reduced 50-foot buffer within this planning area as Policy 3.1 calls for a 100-foot buffer unless reduced by CDFG.

To be found consistent with Chapter 3 policies, the Commission finds a buffer strip of at least 100 feet in width shall be maintained in a natural condition around the perimeter of all wetlands or environmentally sensitive habitat areas, unless the State Department of Fish and Game determines that a lesser setback or physical barrier is adequate. However, in no case shall a buffer of less than 50 feet in width be permitted. Fencing shall be required to prevent uncontrolled access of persons or domestic animals into the wetland or environmentally sensitive areas. In addition, in order to protect ESHA and wetlands, the LUP should prohibit vehicles, pedestrians, and horses from entering the wetlands, environmentally sensitive, and buffer areas, except for resource management and educational purposes. Further, to the extent access improvements are needed to facilitate access for resource management and education purposes, such improvements should be permitted only within the upper half of the required buffer.

Further, the Commission has found on many occasions that high densities associated with residential development proposals near wetland areas has resulted in adverse impacts to such resources. These resources are directly adversely impacted by intrusion from humans and pets and indirectly adversely impacted by the introduction of erosion and pollution (sedimentation, insecticides, pesticides etc.) into wetlands.

The wetlands surrounding Agua Hedionda Lagoon are an environmentally sensitive habitat area under Section 30240 of the Coastal Act. Therefore, residential development on Planning Area A, which is immediately adjacent to these wetlands must be consistent with both Section 30231 of the Coastal Act, and Section 30240(b), which requires that development in areas adjacent to ESHA must be sited and designed to prevent impacts which would significantly degrade the ESHA. For the above reasons, the Commission finds the land use designation of RMH (8-15 dua) is too high a density for this area. Residential development at this density could result in adverse impacts to the nearby wetlands and lagoon through human and pet intrusion, erosion, and polluted run-off. Because the Land Use Plan amendment fails to reduce the density of Planning Area A to reflect the need to protect the expanded ESHA wetlands, the LUP amendment is inconsistent with Chapter 3 policies of the Coastal Act. The density on proposed Planning Area A should be revised from the proposed RMH (8-15 dua) to RLM (0-4 dua).. Additionally, the City shall prepare a revised Exhibit D as part of the certified LUP, which shall indicate the boundary of the Wetland Preserve as shown in the documents prepared for dedication purposes (ref. Ex. 11).

Also, the revised wetlands map should include any wetlands located on proposed Planning Areas A and C.

Additionally, the Commission is concerned about the protection of upland resources (i.e., naturally vegetated steep slopes). Existing LUP policy 4.4 restricts development, grading and landform alteration on steep slope areas (25%) grade and greater. However, the policy does not state that development of steep hillsides should be avoided, if feasible. Any unavoidable disturbance shall be minimized to the extent possible. Since the LUP amendment fails to reflect this need, it is inconsistent with Chapter 3 policies of the Coastal Act. Thus, for all of the above reasons, the Commission finds the proposed LUP amendment inconsistent with Chapter 3 policies of the Coastal Act.

b. Mello II Land Use Plan

Section 30240 of the Coastal Act requires that new development be sited and designed to not have an adverse impact on coastal resources. The Commission finds that the proposed amendment is inconsistent with Chapter 3 policies regarding preservation of environmentally sensitive habitat areas for the following reasons.

The Kelly Ranch Master Plan was approved with an extensive upland open space system, which contains two environmentally sensitive habitats--coastal sage scrub (CSS) and southern maritime chaparral (SMC) on most of the steeply sloping hillsides. The proposed LCP amendment would accommodate a pattern and density of residential development on the Kelly Ranch with a revised open space system from that approved in the Kelly Ranch Master Plan. The revised open space plan would permit 13.7 acres of "dual criteria" slopes to be impacted by grading. "Dual criteria" slopes are designated in the certified Mello II LCP as naturally-vegetated steep slopes at least 25% grade. There is a total 61.6 acres of dual criteria slopes onsite within the 150 acres encompassing the Core Area where the majority of residential development is proposed. While much of the proposed impact is limited to slopes isolated from the main landforms of the site or slopes which have been disturbed by previous grading or agricultural activities, several canyons are proposed to be filled which were found worthy of preservation in the Commission's previous approval of the Kelly Ranch Master Plan.

Although the previously approved Kelly Ranch Master Plan was approved with an extensive open space system, it is not in conformance with the NCCP requirements which have been developed since certification of the master plan. The proposed amendment will allow development in conformance with the City's Habitat Management Plan (HMP), and has been approved by the USF&WS and CDF&G. However, while the City approved the open space system based on its consistency with the HMP, as noted above, it is not consistent with all the resource protection provisions of the certified LCP. Policy 3-5 requires that for those slopes mapped as possessing endangered plant/animal species and/or coastal sage scrub and chaparral plant communities, slopes of 25% grade and over shall be preserved in their natural state, unless the application of this policy would preclude any reasonable use of the property, in which case an encroachment not to exceed 10% of the steep slope area over 25% grade may be permitted. Uses of slopes

over 25% may be made to provide access to flatter areas if there is no less environmentally damaging alternative available. The Commission notes that the City only protected the environmentally sensitive habitat areas that were negotiated with the resource agencies to find consistency with the HMP. The City's approval did not address protection of dual criteria slopes, notably a number of small canyons on the hillside areas that are proposed to be filled. The existing master plan recognizes the habitat value of these areas and calls for their protection. Additionally, the City's approval fails to address landform alteration or visual impact associated with grading of steep hillsides.

As noted, Policy 3-5 allows use of slopes over 25% grade to provide access to flatter areas if there is no less environmentally damaging alternative available. The existing master plan allows approximately 4 acres of impact to dual criteria slopes for the road system. The proposed amendment proposes approximately 6 acres of impact for the road system as engineered. The road, known as HH, in the southeast corner of the core area is of special concern as it proposes significantly more impact into dual criteria areas than the previous design approved in the master plan. The City states it is the least environmentally damaging alignment based on the fact that it provides the sole access to the Kirgis parcel to the south which is also part of the HMP as a "Standards" area. (A Standards area is an area that is proposed for inclusion into the open space preserve of the HMP but it still being negotiated). Presently road HH stubs out beyond the southern property line of the core area onto the Kirgis parcel. The alignment has been accepted by the resource agencies as consistent with the HMP. They found that although it bisects the large open space area that runs north/south on the property, each portion of open space is capable of sustaining a viable wildlife corridor for plants and animals. The sponsor of the LCP amendment also provides the following:

Considering that Village I and more directly Village "J" constitute islands of developable lands surrounded largely by dual criteria lands, and City of Carlsbad safety policies require two separate accesses for each, the locations chosen were picked specifically for their low level of environmental impact.

The Village I accesses are located in virtually the same location as in CDP 6-84-617, within areas only marginally considered dual criteria. Note that the Village "J" access however has been removed from its previous location within a valley of mature SMC vegetation (including Del Mar manzanita), to its proposed location up a more gradual slope, characterized by disturbed CSS and CSS. Further, its fill slopes are proposed for CSS revegetation, minimizing its impact. The northern Village "J" crossing is situated at the same location in the master plan project, and this location avoids dual criteria lands almost entirely. In addition, the USF&WS, CDF&G and the City of Carlsbad have all approved these crossings specifically because they are located within the environmentally preferred location for such accesses.

However, while recognizing the approval of the above agencies, the Commission finds that their main charge is habitat protection, a value which can apply to hillside areas regardless of slope. The Commission, however, has considered steep, naturally

vegetated hillsides worth of protection for their scenic value and to protect natural landforms and thereby minimize erosion and downstream sedimentation, in addition to habitat value.

Regarding open space preservation, the existing Kelly Ranch Master Plan designates approximately 53.8 acres of dual criteria slopes in open space. The proposed amendment designates approximately 47.9 acres of dual criteria slopes in open space and designates other non-steep vegetated and unvegetated areas in open space as part of the HMP preserve. Two areas of previously approved open space are proposed for development. One is a long, narrow canyon area in Planning Areas J and O of the Kelly Ranch Master Plan. Although it is separated from the main north/south trending open space corridor that occurs to the east, it remains a significant open space corridor. The other area is a large amount of open space in Planning Areas H and K of the master plan which again is isolated from the open space system running north/south and east/west on the subject site. However, this area also has habitat value and would be protected under the dual criteria habitat provisions of Policy 3-5 and the Coastal Resource Protection Overlay zone.

It is difficult to determine what density would be permitted within each individual planning area of the master plan if all dual criteria areas were not developed. While the municipal code requires that area comprising “undevelopable lands (i.e., beaches, wetlands, slopes over 40% grade, etc.)” not be used when calculating allowable density on property proposed for development, dual criteria areas are not excluded from such calculation. Thus, their preservation as called for in the LCP should not affect the density designation given to a planning area. The LUP policy, however, requires that any permitted density should be clustered on the non-sensitive, flatter, portions of the site and natural landforms should not be significantly altered. Therefore, if the maximum permitted density cannot be accommodated on a parcel consistent with the resource protection policies of the LUP, the resource protection policies shall prevail.

Regarding one of the individual planning areas that make up the Core Area (all the planning areas east of Cannon Road), Planning Area “L”, is shown designated Residential Medium on the proposed LUP map and is designated R-1 on the proposed zoning map. This planning area is shown as a “Standards” area in the City’s Habitat Management Plan which means that the Resource agencies have indicated all or portion of the area should be considered for incorporation into the “hardline preserve”. The Commission finds that this area consists almost entirely of naturally-vegetated steep slopes. These steep slopes provide valuable habitat for the gnatcatcher as well as other sensitive species. In addition, these slopes are contiguous with the already existing “hardline preserve” area. Therefore, the Commission finds that the naturally-vegetated steep slopes in this area are environmentally sensitive habitat area (ESHA). The portion of the area that is flat and disturbed is so small that construction of even one residence would require clearance of native vegetation (coastal sage scrub) in the ESHA for fire safety purposes. Construction of residential development in this area would either encroach directly into the ESHA or would cause disruption of the ESHA by fire clearance activities. Therefore, residential development in this area is inconsistent with Section 30240 of the Coastal Act. The Mello II land use plan, as proposed by the City, would

allow from 4-8 dual on approximately 3.8 net acres where a parcel has not yet been created. This would allow potentially 22 to 30 residential units on that residentially designated site. Therefore, as submitted, the proposed Mello II land use plan is inconsistent with Chapter 3 policies of the Coastal Act.

Regarding brush management, the existing master plan text contains fire suppression guidelines that require a fuel modification zone be established around new development so that vegetation clearance will be kept to the minimum necessary for fire safety. Aside from the Master Plan, the Mello II LUP does not contain brush management provisions. Thus, the proposed amendment would eliminate the only brush management policies applicable to Kelly Ranch. Furthermore, since the certification of the Master Plan, the Commission has updated the fire suppression provisions within the City of Carlsbad LCP segment for the Aviara development on the north shore of Batiquitos Lagoon. The Commission needed to update these policies because they were developed before coastal sage scrub was found to be ESHA and before the fire departments began requiring larger areas of vegetation clearance to protect structures. Because Kelly Ranch contains significant areas of coastal sage scrub, the policies applicable to development of Kelly Ranch must include updated brush management policies that reflect the ESHA status of coastal sage scrub as well as the need to reduce vegetation clearance for visual and erosion control purposes. Therefore, because this current fire suppression language is not provided within the existing text of the Mello II LCP, the Commission cannot find that the amendment is consistent with Section 30240 and other Chapter 3 policies of the Coastal Act and must be denied. Inclusion of the updated fire suppression language in the form of a suggested modification will be necessary to find the amendment consistent with Section 30240 of the Act.

Additionally, with regards to water quality, the LUP contains no provisions that require new development to use Best Management Practices during construction and operation of residential projects to ensure water quality will be preserved through a water quality/urban runoff control plan. As described in the findings for denial of the Agua Hedionda Lagoon LUP amendment, such policies are necessary for the LUP to be consistent with Chapter 3 policies of the Coastal Act. Without such provisions, the amendment must be denied. Based on the above, the Commission finds that the proposed amendment cannot be found consistent with Chapter 3 policies of the Coastal Act and must be denied.

2. VISUAL RESOURCES

a. Agua Hedionda Land Use Plan

Section 30251 of the Coastal Act provides in part:

Section 30251

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of

surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

In recognition of the unique scenic and natural resource values of Agua Hedionda Lagoon, the City adopted detailed provisions in the Agua Hedionda LUP aimed at preserving and protecting the visual quality of the lagoon. The project site is highly visible from traffic on I-5 and El Camino Real. The Carlsbad LCP recognizes that the lagoon and surroundings present a scenic open space break from the intense urban development characteristic of the Southern California coastal zone. Excellent views and vistas are afforded the public from such vantage points along Carlsbad Blvd., I-5, Adams Street, the subject property and Park Drive. Cannon Road is designated as a Scenic Highway. As a result, the City included the following policies in the LUP which are relevant to the subject property:

Policy 8.3 Development located adjacent to scenic roadways, or located between the road and the shoreline, shall be regulated as follows:

- b) Where no significant elevation difference exists between the shoreline and the first parallel public road, permitted development in the intervening area shall provide a view corridor, of a width equivalent to at least one-third of the road frontage of the parcel, which shall be kept free of all structures and free of landscaping which at maturity would rise above a reasonable viewline from vehicles passing on the public road.
- c) On all property adjoining the shoreline, permitted development shall be designed to “step down” in height, to avoid casting shadows on shoreline areas and to produce a perceived transition from open space areas to developed areas ...
- d) Any development proposed to be located on or near a significant landform (e.g., Agua Hedionda Point) shall be designed so as to minimize disturbance of natural landforms, and shall be developed in a manner that assures its compatibility and harmony with the natural landform through use of such architectural techniques as terraced or pole foundations and variations of roof lines to complement the topography

The proposed amendment proposes large areas of open space including the wetlands and associated upland habitat areas of the site. In response to Section 30251 of the Coastal Act, one of the issues addressed in the Land Use Plan was the preservation of public views from Park Drive. This street is a designated scenic corridor, which runs along the north shore of the lagoon. The policies of the LUP require that development of the lots, which lie between Park Drive and Agua Hedionda Lagoon, be designed so as to preserve the views from Park Drive.

The policies call for the view preservation to occur through either: (a) the siting of structures at elevations below that of Adams Street adjacent to the property or (b) the preservation of one-third of the width of the parcel as a "view corridor". The preferred method for preserving such views

lies in the siting of all (portions of) structures on a site at an elevation, which is below that of the elevation of the adjacent scenic roadway. This would allow passers-by to see over the structure(s) to the lagoon and surrounding areas. The Commission is concerned about the views from and to Planning Area "A". This parcel currently has a large amount of fill that was deposited during the grading of a nearby residential subdivision which obscures views across the site to the lagoon and wetlands from Park Drive. The Commission finds that to be found consistent with the Coastal Act and the above LUP policy, any development on Planning Area A should be designed to preserve any natural landform and shall provide a public view corridor of a width equivalent to at least one-third of the road frontage of the parcel, at the northern property line. The public view corridor should be kept free of all structures and free of landscaping which at maturity would rise above a reasonable viewline from vehicles passing on the public road. The view corridor should be secured through deed restriction or easement as a condition of development approval.

The Commission is also concerned about landform alteration in this visually significant area. Existing policy 4.4 of the Agua Hedionda LUP recognizes the unique environmental features of the lagoon and its environs and the sensitivity of the area to soil erodibility and sedimentation, and requires that new development limit grading and vegetation removal to minimal site preparation to preserve natural landforms. The policy requires development, grading and landform alteration of steep slope areas (25% grade) shall be restricted although exceptions may include encroachments by roadway and utilities necessary to reach developable area. Finally, it provides that use of the Planned Development (PD) Ordinance and cluster development shall be required in areas containing environmentally sensitive resources, extensive steep slope areas and significant natural landform features. The Commission notes this policy was one of the first policies regarding landform alteration to be certified in San Diego County almost 18 years ago. This language has evolved over the years to include other ways of preventing excessive landform alteration while providing reasonable development expectations to permittees. Thus, the Commission finds it is necessary to update the Agua Hedionda LUP with the current language and, as such, must deny the current amendment request, as submitted.

b. Mello II Land Use Plan

As noted, the Mello II portion of the LCP amendment request contains low lying areas associated with the Wetland Preserve immediately adjacent to the eastern shore of Agua Hedionda Lagoon, and upland areas comprised of steep hillsides and canyons that give way to mesa tops where the single family planning areas, Planning areas I and J, are proposed. This area is yet to be developed and is probably the most rural and open space lands that are remaining within the City's coastal zone. Distant views from I-5 and the ocean exist from many parts of the property. Also to the north is the floodplain of Agua Hedionda Creek and its associated riparian corridor and floodplain. Much of the property has been farmed, although it generally is too steep for cultivated crops. As noted, Cannon Road runs generally parallel to the creek between El Camino Real and the westerly limits of the Kelly property. The area can be characterized as highly scenic based on its topography and the presence of several habitat types.

Although the LCP amendment allows for substantial residential development in an uncommonly scenic area, it fails to provide for any public vista points. This is a major

shortcoming considering the size and topography of the Kelly Ranch and the viewshed across Agua Hedionda lagoon to the ocean. Few, if any, other areas in Carlsbad afford such expansive views in all directions. The residential development allowed under the LCP amendment will result in grading of natural landforms, development of a highly scenic area, and the addition of residential development that will increase the use of coastal resources in the area. Allowing this development without mitigating the adverse impacts on visual and recreational resources is inconsistent with Sections 30250, 30251, and 30252 of the Coastal Act. The Commission finds that the impacts of residential development that will be allowed under the LCP can be mitigated if the LCP provides for public vista points in the area.

One particularly appropriate place for such a viewpoint is the aforementioned Planning Area L. Planning Area L is a steep hillside that climbs to a flat area along the spine of a ridge at approximate elevation 250 feet. The views from this spine across Agua Hedionda Lagoon are spectacular and unique from this vantage point. The Commission finds this area should be designated in the LCP as open space for its habitat value as part of an important wildlife corridor, and it will likely be designated “hardline preserve” in the HMP. However, a public vista point at this location could be achieved without adversely affecting its role as part of the wildlife preserve. Another prime location for spectacular panoramic views would be within Planning Areas I or J and accessible from the community trails system. Because the proposed LCP amendment fails to provide such an important public amenity, it must be denied.

Additionally, the Commission finds that landscape screening of development located along ridgelines shall be a requirement to preserve scenic views from Scenic Highways and public open space and resource areas. Use of trees which reach substantial height at maturity shall be a requirement as a condition of development approval.

3. Public Access

a. Agua Hedionda Land Use Plan

Section 30212 of the Coastal Act provides that adequate public access must be provided by new development. Planning Areas A through C are located between Agua Hedionda Lagoon and the first coastal roadway. The lagoon is somewhat unique in its status as a multiple-use wetland area. The lagoon provides an extensive range of water-related passive and active recreational uses, as well as providing sensitive habitat for plants and animals. In preparing the LUP, the Commission and the City were aware of the need to balance competing uses. Because of this, while public access is desired, the LUP provides for controlled access, limiting the access to pedestrian use only. In this case, the LUP identifies (Policy 7.1) that a bike route is proposed along Park Drive between the western property line and the intersection of Park Drive and Kelly Drive to the northeast. The LUP also identifies that pedestrian access should be provided along the north shore of the lagoon; however, this public trail is not proposed within the lands which are affected by this amendment request. It should be noted that the master plan originally approved an interpretive center to be sited within Planning Area A; however, this facility has been relocated to Planning Area “F” which is located within the Mello II segment.

Policy 5.9 (c) of the Agua Hedionda Lagoon LUP provides that dedication of easements and provisions for funding all public improvements required by this plan and other city plans and ordinances, shall be a requirement for new development. Improvements shall include utility extensions, roadways, bicycle and pedestrian access to designated viewpoints, and any other public improvements necessary to accommodate the proposed development. A public access concern relates to residential development being proposed in Planning Areas “A” and “C”. If proposed as gated communities, both vehicular and pedestrian access could be prohibited through the interior of the sites, and the interior street system would not meet public street standards with respect to width, design or setbacks.

In prior Commission actions, the Commission has found that gated communities are inconsistent with the public access policies of the Coastal Act. The Commission has found that the construction of gated communities in the coastal zone, particularly adjacent to recreational or scenic resources, either directly impacts public access, or has a “chilling” effect on the public’s perceived ability to access coastal resources. The subject sites are immediately adjacent to the 180+ acre Wetland Preserve on the north shore. Moreover, there is currently physical and visual access to the lagoon across the property. Fencing and gating the entire developed area would alter existing access. The Commission finds it appropriate to require that the site not be gated and public streets be proposed to be consistent with the public access provisions of the Coastal Act.

The Commission further finds it appropriate to require that the interior streets be upgraded to meet public street standards, thus increasing the amount of parking spaces available to the public. Public streets are required to accommodate parking on both sides of the street, whereas private streets would accommodate parking on one side only. With regional population growth continuing, the need for adequate support facilities becomes ever more critical. Thus, the Commission finds the maximum possible number of public parking spaces must be provided to find the amendment consistent with the access provisions of the Coastal Act because of its proximity to coastal waters and a significant coastal public recreational area. Public streets with on-street parking, as feasible, and no private gates shall be permitted for any residential development located between Park Drive or Cannon Road and Aqua Hedionda Lagoon. Without such provisions, the Commission finds the amendment must be rejected as not being consistent with Chapter 3 policies of the Coastal Act.

b. Mello II Land Use Plan

Section 30212 of the Coastal Act provides that adequate public access must be provided by new development. The existing Kelly Ranch Master Plan in the Mello II segment contains no specific requirement for public pedestrian access into or through the subject area other than a trail shall be provided along Cannon Road (sidewalk). The City of Carlsbad Open Space Element requires public dedication of a trail system both along the southern frontage of Cannon Road, and along an interior road through Village J, located at the top of the ridgeline. The City found the accommodation of these two trails would be a public benefit, and will be in greater compliance with Coastal Act policies regarding public access. Additionally, the proposed Village F site will accommodate an interpretive center, intended to provide information to the public regarding the adjacent

lagoon wetlands, and incorporate a trail system within the planning area. However, the Commission finds that while the above access provisions are laudable, they do not go far enough to assure adequate public access in this large and important section of the coastal zone.

Section 30212 of the Coastal Act provides that adequate public access must be provided by new development. In its approval of the Aviara Master Plan, on nearby Batiquitos Lagoon, the Commission found a trail system was necessary to find master plan development consistent with the public access and recreation requirements of the Coastal Act. In that case, the trail system links a series of upland community trails to the North Shore Trail which follows the northern shore of Batiquitos Lagoon. The North Shore Trail is an important local and regional visitor destination point for hikers, bicyclists and bird-watchers. The trail system provides the upland linkages to the lagoon and addresses the recreational demand of future residents and impacts on existing public recreational facilities. The Commission has found both the upland community trails and the North Shore Trail are necessary public access and recreation components of the Aviara Master Plan.

There are parallels between the Aviara Master Plan and the subject Kelly Ranch property. Both are large planned developments that are situated near lagoons and enjoy significant amounts of open space because of the resources that inhabit the areas. While the Kelly Ranch is not immediately accessible to the shoreline of Agua Hedionda Lagoon, it is immediately upland of the 180+ acre Wetland Preserve and the floodplain of Agua Hedionda Creek, thereby affording destination points where the coastal visitor can learn about and enjoy the resources of the lagoon and its environs. As noted, Planning Area F is the home of an interpretive center whose objective is to provide a meeting place for the public to learn about and enjoy the resources of the lagoon and its environs. The current amendment does not propose an extensive community trail system. As a result, the Commission finds the LUP amendment cannot be found consistent with Section 30212 of the Coastal Act and must be denied.

4. Intensity of Development/Density Modifications

a. Agua Hedionda Land Use Plan

Section 30250 of the Coastal Act requires that new development be concentrated in areas able to support it without adversely affecting coastal resources and states, in part:

Section 30250.

- (a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources....

The proposed amendment involves modification of land uses and applicable zoning for Kelly Ranch. The City of Carlsbad found this redistribution of land uses necessary to comply with land use regulations adopted since the most recent 1985 LCP modifications for the affected property (i.e., the City's Growth Management Program, which requires stricter limits on densities and developable properties, and the Draft Habitat Management Program, which is an outgrowth of the "threatened" listing of the California gnatcatcher). The proposed amendment results in a net reduction in allowable dwelling units from the existing LCP allowable Kelly Ranch Master Plan capacity of 1400 units to 909 units.

Regarding the Agua Hedionda Lagoon planning areas, the LCP amendment proposes to retain the existing land use designations that were approved in the Kelly Ranch Master Plan, with the exception of Planning Area C. In Planning Area C, a downzoning is proposed in recognition of wetland resources that have expanded onto the planning area since the time of approval of the master plan. The Commission finds this downzoning to be appropriate given the present environmental conditions of the site. Planning Area A is proposed at the same density as approved in the master plan. In this case, similar to Planning Area C, the Commission finds that a downzoning is appropriate, again, given the expansion of wetlands that has occurred within the planning area. However, since the downzoning is not proposed, the amendment must be denied.

b. Mello II Land Use Plan

The proposed increase in residential intensity within Planning Areas D, G and H is acceptable, subject to application of the resource protection policies which address preservation of dual criteria slope areas. The site is near major sources of employment at the Carlsbad Research Center, Carlsbad Airport Center, Carlsbad Ranch industrial and commercial centers, and the LegoLand California amusement park. The site is also situated on an arterial roadway, with direct access to I-5. Planning Areas D, G and H are characterized by some of the more flat terrain on Kelly Ranch, at the base of the upland hillsides. Areas D, G and H are also physically separated from established residential neighborhoods by the Agua Hedionda Lagoon. However, the area encompassed by these planning areas contains two pockets of dual criteria slopes. As noted, one is a long, narrow canyon area in Planning Areas J and O of the Kelly Ranch Master Plan. Although it is separated from the main north/south trending open space corridor that occurs to the east, it remains a significant open space corridor. The other area is a large amount of open space in Planning Areas H and K of the master plan which again is isolated from the open space system running north/south and east/west on the subject site. However, this area also has habitat value and would be protected under the dual criteria habitat provisions of Policy 3-5 and the Coastal Resource Protection Overlay zone.

The proposed decrease in residential intensity in Planning Areas I and J is appropriate in that these areas are more difficult to access because of rougher terrain and hillside conditions, and their high visibility from surrounding areas. Finally, the proposed Planning Area F land use change is appropriate in that the reduced use intensity (from T-R uses) will allow greater preservation of natural open space, will substantially reduce ADT, and have less offsite impacts to the adjacent Agua Hedionda Lagoon wetlands in

the form of less night lighting and less potential of unsupervised entrance and disturbance to the wetlands.

However, the proposed density on Planning Area L is inappropriate given its prominent location on the ridgeline and its integral role in the HMP. As noted, because the hardline preserve area has not yet been negotiated for the property, its inclusion in the hardline preserve will ensure that a viable east/west trending habitat corridor will exist. The Commission is concerned that failure to address the environmentally sensitive nature of Planning Area L at this time is inconsistent with Section 30240 of the Coastal Act and could affect the implementation of the HMP with corresponding adverse impacts to adjacent resource areas. Thus, the Commission finds that the proposed amendment is inconsistent with Chapter 3 policies regarding land use densities and must be denied.

V. FINDINGS FOR APPROVAL OF THE CITY OF CARLSBAD AGUA HEDIONDA LAND USE PLAN AMENDMENT #2-99D - IF MODIFIED

The standard of review for LUP submittals or amendments is their consistency with and ability to carry out the provisions of Chapter 3 policies of the Coastal Act. As noted, the City found the proposed LUP redesignations are required to bring the Kelly Ranch regulations in line with modern requirements for habitat preservation, growth management, and other land use regulatory programs adopted since 1985. However, as noted above, the Commission found that the amendment must be denied for several reasons. These reasons are tied to changes that have occurred since the Commission approved the master plan and reflect current standards of environmental review.

As noted, the emergence of the City's Habitat Management Plan as an important program in resource protection has resulted in a greater emphasis being placed on protection of environmental resources, both wetland and upland. The Agua Hedionda LUP was approved in 1982 with no provisions specifying what permitted uses are within wetlands. This is a major oversight which the Commission is addressing in this action by requiring through a suggested modification that any projects that are proposed in sensitive areas be consistent with Section 30233.

In this case, there has been significant expansion of wetlands over the years on Planning Areas A - D since the extent of such areas were initially surveyed. A 50-foot buffer was previously required on Planning Area A that may no longer be appropriate based on current environmental conditions on the site. The Commission is requiring in this action that an updated wetland delineation and wetland buffer determination be done to determine the appropriate locations for development and resource preservation. Additionally, because the proposed density of Planning Area A would create an expectation of relatively intense development in a wetland area, a revised LUP map must be submitted which identifies that reduced density will occur on Planning Area (from the proposed RMH (8-15 du) to RLM (0-4 du)). As noted, the Commission has found on many occasions that high densities associated with residential development proposals near wetland areas has resulted in adverse impacts to such resources. These resources are directly impacted by intrusion from humans and pets and indirectly impacted by the introduction of erosion and pollution (sedimentation, insecticides, pesticides etc.) into these environmentally

sensitive areas. As revised, the Commission can find the proposed LCP amendment consistent with Section 30250 of the Coastal Act.

In addition, with respect to identifying an appropriate boundary between new development and coastal resources, the Commission finds a revised LCP Land Use Plan map, to replace existing Exhibit C contained in the certified Agua Hedionda LCP Land Use Plan, must be developed to include revisions to the boundaries of proposed Planning Areas A, B, and C as proposed in LCPA #2-99D Kelly Ranch. Additionally, the land use designation on proposed Planning Area B shall be Open Space. The City must prepare a revised Exhibit D as part of the LUP which delineates the boundary of the Wetland Preserve consistent with the offer of dedication to the Department of Fish and Game. Also, the exhibit must show the wetlands existing on Planning Areas A and C.

As noted, the Agua Hedionda LUP recognizes the scenic nature of the area and provides that public views be maintained between the first coastal road and the lagoon. In this case, the four planning areas within the Agua Hedionda segment that were part of the Kelly Ranch Master Plan are all located between the first coastal road (Park Drive) and the lagoon and as such the LUP requires that view corridors be maintained. Of special concern is Planning Area A as it is proposed with the highest residential density and already has an artificial landform that currently blocks views over a significant portion of the planning area. To ensure that a view corridor will be maintained and any natural landforms are maintained, the Commission is approving a suggested modification that calls for reservation of 1/3 of the street frontage at the northern property line (next to Park Drive) as a condition of subdivision approval.

Regarding landform alteration and impacts to steep slopes, Policy 4.4 of the LUP shall be revised to provide that development, grading and landform alteration of natural steep slope areas (25%) grade shall be avoided, when feasible. Currently, the policy restricts development of such slopes. The revised language is more in line with accepted standards of steep slope preservation. It requires that any unavoidable disturbance shall be minimized to the extent possible and that exceptions may include encroachments by roadways and utilities necessary to reach flatter developable areas, when there is no feasible less environmentally damaging alternative.

Regarding public access concerns, based on the location of the planning areas in the Agua Hedionda segment between the first coastal road and the sea, Policy 5.9 (c) shall be revised to read that no private gates shall be permitted for any residential development located between Park Drive or Cannon Road and Agua Hedionda Lagoon. Additionally, public streets with on-street parking shall be provided within the developable portions of the planning areas, as feasible, so that a parking reservoir will be available for coastal visitors for future use as recreational and access demands increase in the area. Finally, although access improvements are encouraged, Policy 3.1 shall be amended to identify that access improvements shall be permitted only within the upper half of any required buffer between development and wetland resources. In this way access will be provided without adversely affecting the resource values of the identified wetland.

Regarding water quality concerns, the Commission finds that all applicable BMPs, including but not limited to curb inlet stenciling, solid waste management (trash removal) and street sweeping, shall be incorporated into the project design through a water quality/urban runoff control plan and monitoring program as a condition of development

approval to ensure the discharge from the proposed outlet is consistent with local and regional standards. The Commission finds that as modified, the proposed amendment can be found consistent with Chapter 3 policies of the Coastal Act.

VI. FINDINGS FOR APPROVAL OF THE CITY OF CARLSBAD MELLO II LAND USE PLAN AMENDMENT #2-99 - IF MODIFIED

The standard of review for LUP submittals or amendments is their consistency with and ability to carry out the provisions of Chapter 3 policies of the Coastal Act. As noted, the City found the proposed LUP redesignations are required to bring the Kelly Ranch regulations in line with modern requirements for habitat preservation, growth management, and other land use regulatory programs adopted since 1985. However, the Commission found above that the amendment must be denied for several reasons. Regarding areas where the proposed revisions do not adequately protect environmentally sensitive habitat, the Commission finds that Policy 3-5 of the Mello II LUP must be updated to recognize the importance of such habitat within the Mello II plan area. The policy shall be amended to state that the City's Habitat Management Plan (HMP) is designed to sustain and enhance a viable upland habitat connection between sensitive lands within Carlsbad. In the Kelly Ranch/Macario Canyon area, such a connection is between the Macario Canyon watershed and Agua Hedionda Creek. Those portions of the "hardline preserve" that exist on lands within the coastal zone shall be designated and zoned as open space in the LCP. Projects that are located in the "standards areas" shall require consultation with the Resource agencies and Coastal Commission staff to determine whether the proposed project is consistent with the certified LCP and the standards discussed in the HMP prior to proceeding through the City permit review process. In that regard, the boundary line for Planning Area L must be eliminated on the land use map.

While the LCP must be changed to acknowledge the important planning goals of the HMP, it must also be revised to ensure that buildout of the planning areas will be consistent with existing resource protection policies contained in the Mello II LUP. In that regard existing Policy 3-5(a)(6) should be revised to indicate the residential land use designations represent the maximum density permitted subject to application of the steep hillside and other applicable resource protection provisions of the certified LCP. As noted, it appears that several individual planning areas would be subject to greater than 10% encroachment into dual criteria slopes based on their proposed densities. As revised, maximum density can only be attained consistent with the protection of coastal resources.

Additionally, the proposed land use map indicates a break in the designated Open Space area to accommodate a secondary access road across the negotiated "hardline preserve" to access Planning Area J. However, that access road has not yet been determined to be in conformance with the steep hillside and resource protection policies of the LCP under an approved coastal development permit. Therefore, the Commission believes it is more appropriate for the land use plan to show the area as open space to provide a contiguous habitat corridor. The Commission is suggesting an additional policy that would acknowledge an access road may be a permitted use in an open space area if approved by the Resource agencies through a 4D permit (as this road has

been) and by an approved coastal development permit (pending and subject to Coastal Commission approval on appeal). This approach keeps the option open of a secondary access road, if there is no less environmentally damaging alternative and the road is necessary, but protects the area as open space in any event. If an area is designated as “hardline preserve” is is considered ESHA and such road or other development would not be permitted.

Updated brush management standards should also be incorporated to ensure that vegetation removal associated with fire safety be kept to the minimum necessary to ensure that sensitive habitats are not adversely impacted. Brush management standards should be implemented in Zone 1 which require a minimum 30-foot wide development setback from required open space areas to incorporate landscaping for screening purposes. No clearcut of sensitive vegetation shall occur to establish fire protection for Zone 1.

Regarding water quality concerns, the Commission finds that all applicable BMPs, including but not limited to curb inlet stenciling, solid waste management (trash removal) and street sweeping, shall be incorporated into the project design through a water quality/urban runoff control plan and monitoring program as a condition of development approval to ensure the discharge from the proposed outlet is consistent with local and regional standards. The Commission finds that as modified, the proposed amendment can be found consistent with Chapter 3 policies of the Coastal Act.

PART VII. FINDINGS FOR DENIAL OF THE CITY OF CARLSBAD MELLO II LCP IMPLEMENTATION PLAN AMENDMENT #2-99D, AS SUBMITTED

A. AMENDMENT DESCRIPTION

The amendment proposes to change the zoning within the master plan from Planned Community (PC) to R1 (Planning Area E), R-1-Q (Planning Areas C, I and J), R-3-Q (Planning Areas D, G, and H), RD-M-Q (Planning Areas A, K and L), OS (Planning Area B) and OS (Planning Area F). The "Q" overlay, which requires Planning Commission review and approval of a Site Development Plan (SDP), is being applied to each zoning designation with the intent of insuring that future development of the Planning Areas will be visually and physically compatible with each other similar to the intent of a Master Plan. Each zoning designation corresponds to a General Plan designation. The R-I(-Q) implements the RLM land use designation which is characterized by single family residential development, the R-3-Q and RD-M-Q implement the RMH General Plan designation which is characterized by attached multi-family residential development and OS implements the OS General Plan designation which is characterized by improved and natural open space. Approval of the zone change eliminates the requirement for a master plan on this property.

The Kelly Ranch Master Plan was originally approved by the Coastal Commission in 1984 consistent with its zoning, Planned Community (PC). The PC zone is intended to provide a method to encourage the orderly implementation of the General Plan, allow for the comprehensive planning of all necessary public facilities, and provide a framework

for phased development by the comprehensive planning and development of large tracts of land under unified ownership in accord with an adopted master plan.

The project also proposes to repeal section 21.38.160 of the certified municipal code. The City found the elimination of this section was a "housekeeping" item in that with adoption of the proposed land use and implementation plan amendments, a master plan would no longer be required for the Kelly Point and Macario Canyon. A discussion of this ordinance known as "Additional Standards – Upper Agua Hedionda Watershed" follows.

B. SUMMARY FINDINGS FOR REJECTION

1) Purpose and Intent of the Ordinance. The purpose and intent of the Section 21.38.160 (proposed to be deleted from the LCP) is to provide additional development standards for the upper Agua Hedionda watershed which includes Kelly Point and Macario Canyon, implement the goals and objectives of the resource protection provisions of the Carlsbad LCP; assure resources and constraints are properly identified and incorporated into the planning process; preserve and/or enhance the aesthetic qualities of natural landforms and manufactured slopes by designing projects which relate to the slope of the land; minimize the amount of project grading, assure that grading will be done in an environmentally sensitive manner whereby lagoons and riparian ecosystems will be protected from increased erosion and assure no substantial impacts to natural resource areas, wildlife habitats or native vegetation areas will occur.

2) Major Provisions of the Ordinance. The major provisions of the ordinance include supplementing the underlying zoning by providing additional resource protective regulations within designated areas to preserve, protect and enhance the habitat resource values of Kelly Point and Macario Canyon, and steep sloping hillsides; to provide regulations in areas which provide the best wildlife habitat characteristics; to encourage proper lagoon management; and to deter soil erosion by maintaining the vegetative cover on steep slopes. Section 21.38.160 is a part of the PC Zone. It states that a master plan is required, it designates maximum density of development, it references Coastal Development Permit 6-84-617, it identifies information which shall be included in a master plan, and it reiterates many of the requirements of the Coastal Resource Protection Overlay Zone Chapter 21.203 of the Carlsbad Zoning Ordinance. (See attachments for the full text of ordinance sections 21.38.160 and 21.203).

3) Adequacy of the Ordinance to Implement the Certified LUP Segments. The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP. In the case of the subject LCP amendment, the City's Municipal Code serves as the Implementation Program for the Carlsbad LCP. The Mello II LUP has a number of provisions that protect coastal resources, including naturally vegetated steep slopes. Policy 3-5 of the Mello II LUP is a site specific policy for the Kelly Ranch property. It has provisions which state that grading and erosion control on sensitive "dual criteria" (naturally vegetated and over 25% grade) slopes is prohibited unless the application of the policy

would preclude any reasonable use of the property. The policy does not apply to the construction of roads on the City's Circulation Element or the development of utility systems.

As previously noted, the portion of the Kelly Ranch property known as the Core Area contains 61.6 acres of slopes greater than 25% with sensitive species. The existing certified Master Plan, which serves as the LUP and IP, allowed encroachment into some dual criteria slope areas through the anticipated residential buildout (ref. Ex. 12). However, there are areas of open space retained within the residential planning areas that are not shown as open space on the proposed land use plan.

However, each Planning Area within the Kelly Ranch property must comply with the slope and resource preservation policies of the certified Mello II LCP and Section 21.203 of the municipal code. Any application for development within a planning area shall require a slope analysis, biological resource map during Site Development Plan review. The overlay zone identifies five areas of protection. They are 1) steep slopes and vegetation; 2) drainage, erosion, sedimentation, habitat; 3) landslides and slope instability; 4) seismic hazards; and 5) floodplain development. The policy states that slopes of 25% grade and over shall be preserved in their natural state unless application of the policy would preclude reasonable use of the property. Also, since disturbance of 25% slopes may be required to access flatter portions of the site and, thus, allow a reasonable use of the property, the policy further states that such encroachment may be allowed, if there is no less environmentally damaging alternative available. These policies will apply to the Kelly Ranch property as a result of deletion of Section 21.38.160.

While 21.203 contains the above provisions, there are several provisions in 21.38.160 which are not in 21.203. These are important provisions that were included in Policy 3-5 to find it consistent with Chapter 3 policies of the Coastal Act. These include a provision that due to severe site constraints, innovative siting and design criteria (including shared use of driveways, clustering, tandem parking, pole construction) shall be incorporated into the master plan to minimize paved surface area. Dwelling units shall be clustered in the relatively flat portions of the site and park purposes shall be a permitted use (i.e., on the Macario Canyon site) subject to the erosion control provisions of Section 21.203. Thus, while the Commission can support the repeal of 21.38.160 because the bulk of its provisions exist in 21.203, it finds that the preceding provisions must be made part of 21.203.

Regarding water quality concerns, the Mello II LCP does not contain recent language requiring new development to employ best management practices when developing upland of sensitive areas like Agua Hedionda Lagoon. Therefore, because the proposed amendment is not consistent with the resource protection provisions of the certified land use plan, the amendment must be denied.

PART VIII. FINDINGS FOR APPROVAL OF THE CITY OF CARLSBAD LCP IMPLEMENTATION PLAN AMENDMENT #2-99D, IF MODIFIED

The standard of review for implementation plans is Section 30513 of the Coastal Act. Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. As noted, the City found the proposed LUP redesignations are required to bring the Kelly Ranch regulations in line with modern requirements for habitat preservation, growth management, and other land use regulatory programs adopted since 1985. However, the Commission found above that the amendment must be denied for several reasons because it could not be found to be consistent with the resource protection provisions of the Mello II LUP.

However, the attached Suggested Modifications address incorporation of the hardline preserve areas as open space, establish brush management standards, require use of BMPs to improve the quality of discharged runoff, and require landscape screening and implementation of the Scenic Preservation Overlay Zone for the Kelly Ranch property. With these revisions, the Commission finds the proposed amendment is in conformance with the resource protection policies of the certified Mello II LUP.

IX. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission and the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform to CEQA provisions. The City of Carlsbad has prepared and certified an EIR (EIR 98-05) for the Kelly Ranch Core Area; however, the Commission has found that several significant impacts associated with the proposed LCP Amendment remain and has proposed suggested modifications to make the amendment request consistent with Chapter 3 policies of the Coastal Act and the Carlsbad LCP. As a result of these modifications, the Commission finds that the proposed amendment does conform to CEQA provisions. The LCP amendment to the Agua Hedionda Lagoon and Mello II segments of the City's LCP proposes changes to the land use designations and zoning of properties within the City's coastal zone, and eliminates the existing Master Plan requirement. The changes will not result in an intensity of land use incompatible with the surrounding area or have adverse impacts on coastal resources as modified. Therefore, the Commission finds that approval of the LCP amendment will not result in any significant unmitigated adverse environmental impacts.

